



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 6, 1998

The Honorable Frank D. Moore
Delta County Attorney
41 West Side Square
P.O. Box 28
Cooper, Texas 75432

Letter Opinion No. 98-091

Re: Whether a county commissioners court may
lease vacant space in the county courthouse to a
title company, and related question (RQ-1073)

Dear Mr. Moore:

You ask whether a county commissioners court may lease vacant space in the county courthouse to a title company to use as an abstract office. We conclude that the county may provide, free of charge, space to a title company to examine and copy public records, just as the county provides space to any member of the public to examine public records. We also conclude that the county commissioners court may lease space to the title company to perform its other functions if the court finds (1) that the title company's use of the space will not interfere with the courthouse's official use and (2) that locating the title company in the courthouse is necessary to the convenience of the employees or the people who transact business in the courthouse. Similarly, we conclude that the county commissioners court may permit the owner of the title company, an attorney, to engage in his or her private practice from the title company's courthouse office if the court finds (1) that the attorney's use of the space will not interfere with the court's official use and (2) that locating the attorney's practice in the courthouse is necessary to the convenience of courthouse employees or the people who conduct business there.

You indicate that Delta County has vacant office space in the county courthouse. The commissioners court is interested in renting the space to a title company, the only title company in Delta County at this time, for its use as an abstract office. We understand from your letter that the title company will be allowed to move its records, office equipment, and personnel to the courthouse and to conduct its normal business in the courthouse office, *e.g.*, preparing closing papers and issuing title insurance. You also state that the owner of the title company is an attorney who, if the title company is allowed to lease the space, would like to practice law out of the title company's courthouse office.¹ You question the propriety of the proposed lease.

We conclude first that the courthouse may provide the title company with space to examine and copy public records, but the county may not charge for the space. In *Tarrant County v. Rattikin*

¹You do not inform us whether the attorney who owns the title company is currently the only attorney in private practice in Delta County.

*Title Co.*² the Texas Court of Civil Appeals concluded that a county may provide space in the county courthouse in which a title company may examine, inspect, and copy public records, but the county may not charge rent for this service.³ As the *Rattikin Title Co.* court pointed out, the law requires that the county clerk's records be open to the public at all "reasonable" times and that a member of the public may make a copy of any of the records.⁴ To allow the county to collect rent for the space it voluntarily provides to a title company, in which the title company exercises its statutory right to examine public records, the court continued, "would destroy the spirit of the [s]tatute granting free access to the public records."⁵

To the extent Attorney General Opinion MW-200 suggests that a county may provide, free of charge, office space to a title company to perform functions other than examining, inspecting, and copying public records,⁶ we believe it is incorrect. In our view, *Rattikin Title Co.* is limited to determining whether a county may lease space to a title company to examine, inspect, and copy public records. The case does not discuss the propriety of leasing space to a title company to perform functions other than exercising its right, as a member of the public, to examine, inspect, and copy public records.

We next consider whether the county commissioners court may lease space in the courthouse to the title company to conduct functions other than examining, inspecting, and copying public records. Because this issue and the remaining issue, whether the county commissioners may permit the private attorney who owns the title company to conduct his or her private practice in the leased space, involve similar legal principles, we will consider them together. We conclude that the commissioners court must resolve both issues using a two-question analysis. We also believe the same precedents may provide guidance as the commissioners court considers both issues.

As this office previously has stated, a commissioners court may lease space within the courthouse to a private business in "limited circumstances."⁷ The commissioners court, which must consider the issue in the first instance, must consider two points:

1. Will the use of the rental space interfere with proper use of the courthouse?

²199 S.W.2d 269 (Tex. Civ. App.--Fort Worth 1947, no writ).

³See *id.* at 270, 272.

⁴See *id.* at 271. The statute the *Rattikin Title Co.* court cites, V.T.C.S. art. 1945, has been nonsubstantively codified as Local Government Code section 191.006. See Act of May 1, 1987, 70th Leg., R.S., ch. 149, sec. 1, § 191.006, 1987 Tex. Gen. Laws 707, 953; see also *id.* § 49(1), 1987 Tex. Gen. Laws 707, 1307 (repealing V.T.C.S. art. 1945).

⁵*Rattikin Title Co.*, 199 S.W.2d at 272.

⁶See Attorney General Opinion MW-200 (1980) at 1-2.

⁷See Attorney General Opinion JM-449 (1986) at 2.

2. Is locating the business within the courthouse necessary to the convenience of those transacting business in the courthouse?⁸

Resolving each of these points involves considering fact questions, a task that is not suited to the opinion process.⁹

Two precedents may provide guidance. In *Dodson v. Marshall* the Court of Civil Appeals determined that a county commissioners court may lease courthouse space, specially constructed for use as a cigar and cold-drink stand, to a private operator if the commissioners court finds that the private operator's use will not interfere with official use of the courthouse and if the court exercises reasonable discretion.¹⁰ The *Dodson* court believed it reasonable that the commissioners court would seek to provide a cigar and cold-drink stand in the courthouse for the convenience of county officers, employees, jurors, and others doing business in the courthouse: "Such a stand, as is here under consideration, conveniently located within the courthouse, doubtless saves much of the time of county employees, jurors and others that would otherwise be consumed in going to and from more remote places to purchase such commodities during business hours."¹¹ Likewise, in Attorney General Opinion MW-200 this office concluded that a county commissioners court may furnish space in the courthouse to a county employees' credit union if the court concludes that locating the credit union in the courthouse "is necessary to the convenience of county employees."¹²

⁸*See id.*; cf. Attorney General Opinions DM-131 (1992) at 2-3 (determining that hospital district may lease space to private adolescent drug treatment facility if, among other things, lease serves public purpose and includes controls sufficient to ensure that public purpose is accomplished); DM-66 (1991) at 1-4 (determining that hospital district may lease space to private kidney dialysis clinic).

⁹*See, e.g.*, Attorney General Opinions DM-98 (1992) at 3; H-56 (1973) at 3; M-187 (1968) at 3; O-2911 (1940) at 2.

¹⁰*See Dodson v. Marshall*, 118 S.W.2d 621, 624 (Tex. Civ. App.--Waco 1938, writ dismissed).

¹¹*Id.* at 623.

¹²Attorney General Opinion MW-200 (1980) at 2. If the commissioners court decides to lease the vacant office space, it must comply with Local Government Code section 263.001, which requires a commissioners court to make a lease at a public auction. Moreover, the commissioners court must determine that any proposed lease satisfies article III, sections 51 and 52 of the Texas Constitution. *See* Letter Opinion No. 97-068 (1997) at 5 (and opinions cited therein). Thus, the commissioners court must find that the proposed lease serves a public purpose, that the county will receive an adequate quid pro quo, and that the proposed lease includes sufficient controls to ensure that the public purpose will be accomplished. *See id.*

S U M M A R Y

A county commissioners court may provide space in the county courthouse to a title company to examine, inspect, and copy public records, but the commissioners court may not charge the title company for the space. Whether a commissioners court may lease vacant space in the courthouse to a title company to perform functions other than examining, inspecting, and copying public records and whether a commissioners court may permit the private attorney who owns the title company to conduct his or her private practice in the leased space depend upon two determinations. First, the commissioners court must determine whether the use of the rental space will interfere with proper use of the courthouse. Second, the commissioners court must determine whether locating these businesses within the courthouse is necessary to the convenience of those transacting business in the courthouse.

To the extent Attorney General Opinion MW-200 (1980) is inconsistent with this opinion, it is modified.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kimberly K. Oltrogge". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee